IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL APPEAL No. 519 of 2006

For Approval and Signature:

HONOURABLE MR.JUSTICE S.R.BRAHMBHATT

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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VRUNDAVANDAS HARJIVANDAS CHANDARANA - Appellant
Versus
THE STATE OF GUJARAT- Respondent

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Appearance :

PARTY-IN-PERSON for Appellant :
Mr. I.M. Pandya, Ld. APP for Respondent:

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CORAM : HONOURABLE MR.JUSTICE S.R.BRAHMBHATT

Date : 14/06/2006

ORAL JUDGMENT

1.Heard Shri. Vrundavandas Harjivandas Chandarana – the appellant appearing in person and Shri. I.M. Pandya, learned APP for the respondent.

2. The appellant has preferred this appeal under Section 11 (1) of Criminal Law Amendment Ordinance, 1944, challenging the order passed by learned Addl. Sessions Judge at Junagadh on 13/2/2006 in Criminal Misc. Application No. 254 of 2003, ordering that the present appellant is not to sale, mortgage, gift, or alienate in any manner the property Nos. 1, 3 and 12 to 17 in the schedule without prior permission from the concerned court. This court (Coram:H.B. Antani, J) passed following order on 24/3/2006:

> " Rule returnable on 5/4/2006. Mr. I.M. Pandya, Ld. APP waives service of rule on behalf of respondent State. He is directed to take instructions in the matter. "

3. Today the matter is listed before this Court in the cause list of urgent final hearing. Learned APP has shown the record pertaining to the matter. The appellant – party-in-person has also taken this court through the record available with him.

4. The appellant has urged that the order impugned ought not to have been passed by the Court as the same is

passed against the persons who were not parties and whose properties are sought to be restrained from being alienated without prior permission of the Court. The appellant has stated before this Court that the properties sought to be restrained from being alienated without prior permission of the Court do not belong to him and he is not the sole owner and it is joint properties. He also states that the co-owners have not preferred any objection before the trial court. As he is the co-owner he has a right to challenge the order impugned. He has submitted that the order impugned is creating hardship in disposing of the properties as the application seeking permission for alienating properties would take quite some time. In view of this, he submits that the impugned order deserves to be quashed and set aside in this appeal.

5. Shri. Pandya, learned APP has submitted that the order deserves to be sustained as it is absolutely an innocuous order not harming any one. The appellant should not have any objection in going before the Court and seeking permission before alienating the property. Such an order ought not to have been challenged at all in this appeal. Shri. Pandya has further submitted that

the order is passed in terms of the purshish at exhibit-55 submitted by the appellant himself before the concerned Court. As the order is passed in terms of the purshish the appellant has no ground to challenge the same in the present appeal.

6. This Court has perused the record and heard the party-in-person – the appellant at length and Shri. Pandya, learned APP for respondent. It appears that the order impugned is in no way prejudicial to the present appellant. The fact remains that the aggrieved parties who are said to be co-owners have not challenged the order, and as the order does not prohibit sale completely or alienation completely, and it puts only a restriction that in case of alienation in any way is required to be made, then, the same could be done only after obtaining that Court's permission. The purshish at exhibit-55 produced by the appellant also clearly show that the appellant himself had voluntarily stated before the Court by way of the purshish that in case he is required to alienate or sale the property in question then he would be informing the Court in advance in writing and only thereafter any proceedings of that nature would be taken. The mere intimation to

the Court is definitely not sufficient safeguard. The appellant is facing serious charge and the minimum safeguard incorporated in the impugned order is in no way contrary to the provisions of law and is in the interest of justice. In view of this, this Court is of the opinion that the order passed by learned Addl. Sessions Judge dated 13/2/2006 in Criminal Misc. Application No. 254 of 2003 impugned in the present appeal does not call for any interference and the appeal, therefore, deserves to be dismissed, and is dismissed accordingly.

[S.R. BRAHMBHATT, J]

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